

Loans and Hardship Distributions: FAQs on IRS Documentation Requirements

Overview

The April 1, 2015 edition of the IRS Employee Plans News included a section entitled “**It’s Up to Plan Sponsors to Track Loans, Hardship Distributions.**” In what some are calling “soft” guidance on hardships and loans, the section highlights that even if plan sponsors use a third party administrator (TPA) to administer loans and hardship withdrawals, they’re still ultimately responsible for the proper administration of their retirement plan and must make sure they’re keeping up with recordkeeping requirements. The newsletter lists documentation related to hardships and loans that sponsors should be retaining in paper or electronic format.

[Click here to read the full newsletter.](#) The list of documentation requirements is on pages 2 and 3.

1. Do I need to contact the vendors administering loans and hardship withdrawals for my plans to gather existing documentation listed in the newsletter and have the vendors send it on an ongoing basis?

When you outsource plan administrative activities like loan and hardship withdrawal qualification and execution, you rightfully expect that the provider you outsource to will be accountable for the administrative records associated with managing those transactions.

While it’s helpful to know what type of documentation the IRS would look for during an IRS audit, ***the newsletter does not constitute formal guidance from the IRS*** requiring sponsors that have outsourced loan and hardship administration to maintain this documentation in-house. That said, it does serve as a good reminder of your duty to monitor the providers you have outsourced to.

2. How will TIAA-CREF support me if/when I’m asked to provide this information?

TIAA-CREF provides comprehensive support for plan loans and hardship withdrawals. As part of that support, we collect and maintain all required documentation associated with these transactions and can quickly provide it in the case of a DOL or IRS audit or compliance check.

You can be confident that TIAA-CREF has the listed records and can produce them for you as needed, as we have and continue to do for multiple clients who have gone through DOL or IRS audits. Providing this information is routine and we have an excellent record of responsiveness to both our clients and the IRS and DOL.



Please note that there are two possible scenarios for **hardship distributions**.

- **If TIAA-CREF makes determinations** on behalf of your organization, we obtain and retain, in electronic format, all necessary supporting documentation as required under IRS safe harbor rules, along with documentation of the review and approval process.

As part of its determination process, TIAA-CREF has policies and procedures in place outlining the applicable rules and regulations for hardship distributions made in accordance with IRS safe harbor requirements, as well as the types of documentation that would meet these requirements.

- **If you, as the plan sponsor, make hardship determinations** for your participants—whether in accordance with the IRS safe harbor or through employee representation methods—**TIAA-CREF relies solely on you as the employer to have provided approval for the hardship distribution request forms we receive.** We do not request or maintain supporting documentation in this case. You are responsible for obtaining and maintaining all supporting documentation.

3. One item I've heard my peers talking about is the newsletter's reference to the need for documentation verifying that loan proceeds were used to purchase or construct a primary residence. Does TIAA-CREF currently verify this?

TIAA does not permit participants to self-certify their eligibility for plan loans issued for purposes of purchasing or constructing a primary residence. We require written documentation from participants that loan proceeds will be used to purchase or construct a primary residence before we will issue loans for periods greater than five years.

Consistent with current IRS rules and industry practice, we do not presently verify after the fact if plan loans issued for primary residence purposes were indeed actually used to purchase or construct a primary residence. Industry groups are now seeking clarification from the IRS as to whether such “after the fact” validation is what they are referring to in the guidance issued in their latest issue of Employee Plans News.



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